

ARKANSAS COURT OF APPEALS

DIVISION I
No. CA08-1180

LaDONNA NEWTON

APPELLANT

V.

ARKANSAS DEP'T OF HUMAN
SERVICES

APPELLEE

Opinion Delivered FEBRUARY 25, 2009

APPEAL FROM THE CARROLL
COUNTY CIRCUIT COURT,
[NO. JV 2006-57]

HONORABLE ALAN D. EPLEY,
JUDGE

AFFIRMED

ROBERT J. GLADWIN, Judge

Appellant LaDonna Newton brings this appeal from the order of the Carroll County Circuit Court terminating her parental rights to her three children, L.L., A.L., and D.N.¹ She argues that there is insufficient evidence to support the circuit court's findings, both as to grounds for termination and as to whether the termination is in the children's best interests. We disagree, and accordingly, we affirm.

When this case began on November 3, 2006, there was already a history of involvement of the Arkansas Department of Human Services (DHS) with this family, concerning allegations of inadequate supervision and drug use by Newton. According to the affidavit filed in support of DHS's petition for emergency custody, Newton was hospitalized

¹Brian Langston is the father of the children. His parental rights were also terminated in the same proceedings. However, he does not appeal.

in late October 2006 because of her methamphetamine use. On October 30, 2006, she left the hospital against medical advice, only to return later that day with fresh needle marks. At the time, the children were being cared for by their father, and he did not know Newton's whereabouts.

An adjudication hearing was held on December 6, 2006, which Newton failed to attend. The circuit court found that the children were dependent-neglected. The court approved a goal of reunification and ordered Newton to complete twelve hours of parenting classes, submit to a substance-abuse assessment, enter treatment for her substance-abuse problem, obtain and maintain stable employment and housing, and submit to random drug screens.

On April 6, 2007, Newton pled guilty in the Boone County Circuit Court to several offenses committed in April, May, and October 2006 involving forgery, theft of property, and hot checks. She was sentenced to two years' imprisonment in the Arkansas Department of Correction, followed by an eight-year suspended imposition of sentence on the forgery charges. She was also ordered to make restitution to her victims.

At a November 1, 2007 permanency-planning hearing, the circuit court changed the goal of the case plan to termination of Newton's parental rights, based upon a finding that return of the children to Newton was not in their best interests. The court found that Newton had not complied with the court's orders or the case plan in that she had been arrested and incarcerated, did not have stable employment or housing, and had not visited the children on a regular basis.

On December 7, 2007, Newton pled guilty to a hot-check charge in Washington County Circuit Court. Imposition of her sentence was suspended for sixty months. She was also ordered to pay restitution and court costs once she was released from incarceration on the Boone County charges.

On April 17, 2008, DHS filed its petition seeking the termination of Newton's parental rights alleging the single ground that the children had been adjudicated dependent-neglected and remained out of their parents' home for more than twelve months without the conditions that caused the removal being corrected.

At the May 2008 hearing on the termination petition, LaDonna Newton testified as a witness for DHS that she was expected to be paroled to a halfway house on July 1, 2008, where she would have to remain for thirty days. She acknowledged that she was unemployed and could not recall the last job she had. She also said that she had not paid any child support. Newton said that she complied with parts of the adjudication order by completing twelve hours of parenting classes through the department of correction. She acknowledged that she had not completed the DHS drug and alcohol assessment nor did she complete all of the visits with her children. However, she asserted that she had kept in contact with DHS while incarcerated. She also added that she had completed a nine-month drug rehabilitation program through the department of correction. Newton said that, upon her release, she planned to attend NA meetings. She also insisted that she could have a job within one week of her being released.

On cross-examination, Newton said that she had investigated the possibility of being paroled to two rehabilitation facilities that allow children, but that she was denied. She said that she took every class that the department of correction offered while she was incarcerated in the Pine Bluff unit.

Dawn Ward, a licensed certified social worker and the children's therapist, testified that L.L. was diagnosed with reactive-attachment disorder and anxiety disorder. She said that he exhibits anxiety, nervousness, and restlessness; that he worries a great deal; and that he acts as a parent to his siblings. Ward described L.L. as cautious of people. She also said that L.L. is somewhat anxious during visits with his mother, adding that he makes up excuses for not wanting to visit. According to Ward, A.L. had similar diagnoses as L.L., with her anxieties including being afraid of the dark and of monsters. Ward also said that A.L. has aggressive outbursts or tantrums, which are typical of a child with such anxieties. D.N. was also diagnosed with anxiety disorder. However, separation-anxiety disorder and reactive-attachment disorder had not been completely ruled out as additional possible diagnoses for him. Ward said that the prognosis for all three children was very good, adding that they were doing well with their foster parents.

Manuelita Breedlove, a health and service aide, testified that she conducted three drug tests on Newton, with the September and November 2006 tests being positive for amphetamines, marijuana, and methamphetamines. The third test was conducted in November 2007, after Newton's incarceration, and was negative. She also supervised visits between Newton and her children. Breedlove noted that the children's reaction to the visits

with Newton had changed over time from being glad to see their mother and asking when they were going to get to come home with her to being ready to move ahead with their lives. She added that L.L. and A.L. have both told her that they do not want to live with their mother and want to be adopted. She was not sure that D.N. knew Newton as his mother, due to his young age at the time he entered foster care. According to Breedlove, the children were doing well in foster care and were better behaved than when they entered care.

Ruthann Murphy, the DHS caseworker currently assigned to the case, testified as to the history of the case. She recommended that Newton's parental rights be terminated, based on the length of time the children had been in foster care and the amount of time it would take Newton to show that she was capable of caring for the children. She added that it would be a minimum of six to eight months, possibly a year, before Newton could regain custody once released from prison. Murphy asserted that the children were adoptable. She also said that the children were happy and well adjusted. In discussing the children's diagnosis of attachment disorder, Murphy stated that the children were probably attached to their foster parents. She expressed concern that, if Newton were released, she and the children would be returning to the home where they were living when the children were removed. Murphy described the house as filthy at the time of removal. She added that Newton had never held a steady job or had her own home.

Dana Byrd , the DHS caseworker on the case prior to becoming the county supervisor, testified that Newton was uncooperative with efforts to have a drug assessment and other services offered by DHS. She said Newton was offered parenting classes in her home. Byrd

was unaware of Newton ever paying child support. Getting Newton into a drug treatment program would have started with an assessment, which was never accomplished.

John Reichenberg, the CASA volunteer assigned to the case, recommended the termination of Newton's parental rights. He stated that it would take a minimum of six months for Newton to be in a position to regain custody of the children. He described the children as happy with their foster parents, adding that they are extremely attached to the foster parents. He also said that the children like to visit with Newton but do not want to live with her.

Therapist Dawn Ward was recalled to testify about the symptoms of the children's attachment disorder. She said that the symptoms have decreased because of therapy and the supportive environment provided by the foster parents. According to Ward, the children would significantly regress if they were removed from their foster parents. She indicated a willingness to work with the children, even if the goal were changed to reunification with Newton.

Newton was called to testify on her own behalf and said that she expected to be released by July 1, 2008. Her plan was to be paroled to Henry Faddis's home because she has no other place to go. According to Newton, she had been drug-free since March 2007 and wanted to remain that way by attending NA meetings. She explained that she did not cooperate with Murphy on the drug assessment, believing that if she entered a residential treatment facility, she would not regain custody of her children. She also said that she had a timetable for getting her children back and stated that she knew of several companies that

hired felons. Newton did not believe that the children would be harmed if they were returned to her. She added that, given a chance, she could provide a stable home for them, which she could have, as well as a job and transportation, within two months of her release. Newton indicated a willingness to continue working with the children's therapist.

At the conclusion of the hearing, the circuit court ruled from the bench and granted the petition. The court found that DHS had proven multiple grounds for termination, including that the children had been adjudicated dependent-neglected and remained out of the home for more than twelve months without the conditions leading to the removal being corrected; that the children had lived outside the home for more than twelve months and the parent had failed to provide significant material support; and that Newton had been sentenced in a criminal proceeding to a period of time that would constitute a substantial period of the children's lives. The court's written order was entered on July 17, 2008. This appeal followed.

We review termination of parental rights cases de novo. *Yarborough v. Arkansas Dep't of Human Servs.*, 96 Ark. App. 247, 240 S.W.3d 626 (2006). The grounds for termination of parental rights must be proven by clear and convincing evidence. *Id.* When the burden of proving a disputed fact is by clear and convincing evidence, the question on appeal is whether the circuit court's finding that the disputed fact was proven by clear and convincing evidence is clearly erroneous, giving due regard to the opportunity of the circuit court to judge the credibility of the witnesses. *Id.* A finding is clearly erroneous when, although there is evidence to support it, the reviewing court on the entire evidence is left with a definite and firm conviction that a mistake has been made. *Id.* Termination of parental rights is an extreme

remedy and in derogation of the natural rights of the parents. *Kight v. Arkansas Dep't of Human Servs.*, 94 Ark. App. 400, 231 S.W.3d 103 (2006).

Newton argues one point on appeal—that there is insufficient evidence to support the termination of her parental rights, both as to grounds and as to the termination being in the children's best interests.

The two-step process for terminating parental rights requires the court to find that the parent is unfit and that termination is in the best interest of the child. *J.T. v. Arkansas Dep't of Human Servs.*, 329 Ark. 243, 947 S.W.2d 761 (1997). The court should consider factors such as the likelihood of adoption and the potential harm to the health and safety of a child if subjected to continuing contact with the parent. See Ark. Code Ann. § 9-27-341(b)(3)(A)(i) and (ii) (Repl. 2008). A heavy burden is placed on the party seeking termination. *Jones v. Arkansas Dep't of Human Servs.*, 361 Ark. 164, 205 S.W.3d 778 (2005). Nevertheless, parental rights will not be enforced to the detriment of the health and well-being of the child. *Id.*

First, Newton does not challenge the circuit court's finding that the children were suitable for adoption. Therefore, the issue becomes whether the court erred in finding that the children would be subject to potential harm if returned to Newton's care and custody. According to section 9-27-341, the court was only required to consider the potential harm to the health and safety of a child that might result from continued contact with the parent. *Carroll v. Arkansas Dep't of Human Servs.*, 85 Ark. App. 255, 148 S.W.3d 780 (2004). The court was not required to find that actual harm would result or to affirmatively identify a potential harm. Furthermore, the supreme court has directed that the harm analysis be

conducted in broad terms, including the harm the child suffers from the lack of stability in a permanent home. See *Bearden v. Arkansas Dep't of Human Servs.*, 344 Ark. 317, 42 S.W.3d 397 (2001). A parent's failure to secure stable employment and housing and her indifference to remedying these conditions are all contrary to the children's health, safety, and well-being and support termination of her parental rights. *Trout v. Arkansas Dep't of Human Servs.*, 359 Ark. 283, 197 S.W.3d 486 (2004); *Carroll, supra*. Moreover, the children were no longer bonded with Newton, suggesting that there may be some difficulty with re-establishing relationships between Newton and the children in the event the children were returned to her. This would undermine the permanency that the children had gained while Newton was incarcerated. Finally, the court's potential-harm inquiry is but one of many factors that a circuit court must consider in a best-interest analysis. *Bearden, supra*. We cannot say that the circuit court's finding that the termination of Newton's parental rights is in the children's best interests is clearly erroneous.

This brings us to the second step of the analysis: whether grounds for termination exist and were proven. This case can be affirmed on the basis of the ground alleged in DHS's petition, namely, that the children had been out of the home for more than twelve months, and despite meaningful efforts by DHS to rehabilitate the home and correct the conditions leading to removal, those conditions were not remedied by the parent. It is undisputed that the children had been out of Newton's care for nineteen months at the time of the termination hearing. Therefore, the question becomes whether Newton had remedied the conditions that cause the removal of the children. In her brief, she acknowledged that she had

not done so or complied with the court's orders because she had not found either a home or a job. Moreover, the argument that she had taken advantage of services and overcome her drug addiction while incarcerated ignores the circuit court's finding that, prior to her incarceration, Newton failed to make use of the services offered by DHS in order to rehabilitate herself and reunify her family. She also acknowledged that she did not complete a psychological evaluation, although it is disputed whether she was ordered to do so. Therefore, we cannot say that the circuit court was clearly erroneous in finding that this ground had been proven.

Because only one ground for termination is necessary, *Hall v. Arkansas Department of Human Services*, 101 Ark. App. 417, ___ S.W.3d ___ (2008); *Albright v. Arkansas Department of Human Services*, 97 Ark. App. 277, 248 S.W.3d 498 (2007), we need not address Newton's arguments concerning the other grounds found by the circuit court.

Affirmed.

VAUGHT, C.J., and KINARD, J., agree.